

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Applications of Charter)	MB Docket No. 15-149
Communications, Inc., Time Warner)	
Cable Inc., and Advance/Newhouse)	
Partnership)	
)	
For Consent to Transfer Control)	
of Licenses and Authorizations)	
)	

**COMMENTS OF
CINCINNATI BELL EXTENDED TERRITORIES LLC**

Ted Heckmann
Managing Director of Regulatory Affairs
And Assistant Corporate Secretary
Cincinnati Bell Extended Territories LLC
221 East Fourth Street
Cincinnati, Ohio 45202

Eric E. Breisach
Lisa Chandler Cordell
Breisach Cordell PLLC
5335 Wisconsin Avenue, NW
Suite 440
Washington, DC 20015
(202) 751-2701

*Attorneys for Cincinnati Bell Extended
Territories LLC*

October 13, 2015

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	i
I. THE MULTICHANNEL VIDEO DISTRIBUTION MARKETPLACE IS BECOMING DOMINATED BY A HANDFUL OF UBER-LARGE PROVIDERS THAT HAVE UNDO INFLUENCE OVER THE COST AND AVAILABILITY OF ESSENTIAL INPUTS TO TERRESTRIAL COMPETITORS.....	2
A. New Charter – More than Meets the Eye.....	2
1. Bigger Charter is a More Capable and Stronger Charter – But that is the Root of the Problem for Terrestrial Competitors.....	2
2. Consolidation of the MVPD Marketplace is the Unspoken Driver of the Transaction and Must Factor into the Commission’s Analysis.	3
3. Content-Owning Affiliates of Liberty That Have a History of Withholding Content from Competitors are also Simultaneously Attempting to Consolidate the Content Side of the Industry.	6
4. Dr. Malone and Liberty Have Significant <i>De Facto</i> Influence over Charter and They Exercise it.....	7
B. Cincinnati Bell Fioptics – TWC Competitor	8
C. Competition is Local and the Transaction Harms Local Competition.....	9
D. Competitors to Comcast and TWC Already Struggle with Unequal and Discriminatory Access to Essential Inputs.....	10
II. UNRESTRAINED, NEW CHARTER WILL HAVE THE EFFECT OF FURTHER RESTRICTING THE AFFORDABILITY AND AVAILABILITY OF ESSENTIAL INPUTS.....	11
A. Price/Cost Reductions Extracted by New Charter will Shift Costs, Resulting in Higher Prices to all Other MVPDs, Uniquely Impacting Cincinnati Bell.....	11
B. Service Parity is Largely Unavailable to Cincinnati Bell and other Terrestrial Competitors.	14
C. MFN Provisions Cripple Essential Input Providers’ Ability to Craft Adaptive Agreements to Terrestrial Competitors.	15
III. TO AMELIORATE THE IMPACT OF FURTHER CONSOLIDATION, THE COMMISSION SHOULD PLACE THE FOLLOWING CONDITIONS ON NEW CHARTER.	16
A. MFN Provisions Must be Rendered Unenforceable – at Least with Respect to Terrestrial Competitors.....	16
B. Shedding Light on Charter’s and TWC’s Rates, Terms and Conditions for Essential Inputs is Critical to Help Protect the Viability of Terrestrial MVPD Competition.....	16

C. To Avoid Discriminatory Pricing Aimed at Stifling Current or Future Terrestrial Competitor, New Charter Must Price and Offer Services Uniformly Throughout each DMA.	18
IV. PROGRAMMING COST DISPARITIES MUST BE ADDRESSED TO ENSURE THE VIABILITY OF LOCAL TERRESTRIAL-BASED COMPETITION.	19
A. Liberty-Affiliated Programmers Must Give Terrestrial Competitors the Lowest Rates and Best Non-Economic Terms and Conditions Than it Gives New Charter or Any Other Distributor (Terrestrial or Satellite) in the DMA.	19
B. The Commission Should Require Production of all Charter, TWC and A/N Content Agreements to Allow Assessment of Existing Competitive Advantages in Rates, Terms and Conditions to Serve as a Basis for Determining the Need for Broader Merger Conditions. ..	22
V. ABSENT SOME ABILITY TO ENSURE A MORE LEVEL PLAYING FIELD BETWEEN TERRESTRIAL COMPETITORS AND NEW CHARTER, THE COMMISSION SHOULD DENY THE TRANSACTION.	22

EXECUTIVE SUMMARY

Cincinnati Bell Extended Territories, LLC (“Cincinnati Bell”), an independent local telephone company (never part of AT&T), offers triple-play services in head-to-head competition with Time Warner Cable, Inc. (“TWC”) in the greater Cincinnati area. The transaction before the Commission (“Transaction”) will combine the second, third and sixth largest cable multichannel video programming distributors (“MVPD”) and create a much larger, more capable and stronger “New Charter” that will serve approximately 31.8% of all cable MVPD customers.

The Commission’s scope of review must include the totality of the Transaction. This includes recognition of the intent to create New Charter as the Pacman of today’s cable industry. Both Charter Communications, Inc.’s (“Charter”) CEO and Charter’s largest shareholder’s (Liberty Broadband) controlling shareholder, Dr. John Malone, have each expressed an intent to roll-up the cable MVPDs in the United States into two or three players, that would then divide the country into exclusive geographic zones. New Charter will be one of those players whose size will likely rival that of Comcast’s one or two years post-Transaction.

Immediately post-Transaction, Charter boasts that New Charter will be more capable and stronger all for the benefit of consumers – all without harm to horizontal competition. But Charter fails to mention that the Transaction will harm local terrestrial-based MVPD competition, especially where the competitor has fewer subscribers than New Charter (“Terrestrial Competitors”). Charter makes only opaque references to reduced programming costs as a result of the size of New Charter. But the cost savings as well as receiving more favorable terms and conditions with respect to programming and other essential inputs will be real and significant. Cincinnati Bell currently pays about 30% more for its programming than TWC - a differential certain to expand exponentially post-

Transaction. Additionally, New Charter will realize an immediate financial windfall of about \$51.6 million *per month, every month* -- \$619 million annually -- from simply migrating Charter customers to TWC's programming agreements.

Charter deftly attempts to deflect attention from the advantages New Charter will have over essential inputs related to video services by stressing that its future is in higher gross margin broadband, not video. But Charter is not unique as this is equally true for the future of all Terrestrial Competitors. But today, video remains an integral offering for many broadband customers. A broadband customer who wants video will still comparatively shop cost, content and features offered by each cable MVPD. The cable MVPD that can offer the best product for the best value will win the business of the dual or triple play customer. Thus, New Charter can and will use its significant advantage over the rates, terms and conditions of programming to secure broadband market share at the expense of Cincinnati Bell and other Terrestrial Competitors.

New Charter as the second largest cable-MVPD will be an essential platform for content and technology providers. New Charter will be able to leverage that position to obtain greater and greater concessions in cost as well as improved terms and conditions. For these providers, New Charter's incremental savings, both the initial \$51.6 million per month savings and additional concessions that New Charter extracts, must be recouped and they will be recouped through increased costs for other MVPDs, including Cincinnati Bell and other Terrestrial Competitors -- harming their ability to compete with New Charter.

Cincinnati Bell urges that the Commission take the following measures to help ameliorate the harm to competition that the Transaction poses:

1. **Ban enforceability of Most Favored Nations Provisions.**

Most favored nation's ("MFN") provisions extracted by TWC have frustrated Cincinnati Bell's efforts to obtain competitive rates, terms and conditions in agreements for essential inputs. Often these provisions are *designed* to frustrate the ability of a smaller MVPD from being able to obtain relief by requiring minimum subscriber numbers or dollar amounts that are simply unattainable. New Charter will have the capacity to build on TWC's advantages increasing the harm caused by MFNs. The Commission should bar enforceability of all types of MFN provisions in all vendor agreements to which New Charter is a party relative to any Terrestrial Competitor.

2. **Establish a confidential database to Allow Terrestrial Competitors to More Effectively Negotiate Agreements for Essential Inputs.**

Access to confidential information would aid the ability of Terrestrial Competitors to negotiate fair and competitive agreements with providers of content and other essential inputs. Cincinnati Bell urges the creation of an agreement database administered by a third party that would identify for each essential input (without limitation, content in all formats, equipment, technology and service agreements) all material economic and non-economic terms and conditions provided to New Charter.

3. **Require New Charter to price and offer services uniformly throughout each DMA.**

New Charter, which boasts large levels of deregulation due to effective competition findings, is able to implement discriminatory offering and pricing even within the same franchise area. To avoid misuse of this power from deregulation, New Charter should be

required to make any service and price offerings available uniformly throughout each DMA.

4. **Liberty-affiliated programmers must give Terrestrial Competitors the lowest rates and best non-economic terms and conditions that it gives New Charter or any other distributor (terrestrial or satellite) in the DMA.**

New Charter is vertically integrated with content owners through affiliates of Liberty Broadband. Importantly, those affiliates are reportedly looking to roll-up and consolidate other content owners, such as CBS and/or Viacom, just as Liberty Broadband is planning to have New Charter roll-up the cable MVPDs. Thus, appropriate counterbalances become even more important to protect competition. Additionally, the Liberty Broadband affiliates have used their market power in the past to withhold and to encourage non-affiliated content owners to withhold programming from Netflix, an emerging and now significant competitor to the international cable holdings of Liberty Broadband and its affiliates. The Commission must protect Terrestrial Competitors from anticompetitive power and actions by content owners.

5. **The Commission should require production of all Charter, TWC and Advance/Newhouse content agreements to allow assessment of existing competitive advantages in rates, terms and conditions to serve as a basis for determining the need for broader merger conditions.**

Under the Commission's procedures to review highly confidential information, counsel for parties can advise the Commission as to the extent of the benefits that Charter, TWC and Advance/Newhouse ("A/N") enjoy today – a significant advantage that will only increase for New Charter. Based on this supplemental information, additional conditions on access to programming agreements, both affiliated and non-affiliated, may be warranted.

Cincinnati Bell chose to undertake head-to-head competition with the second largest cable MVPD in the country. Despite the higher cost and disadvantaged access to essential inputs, Cincinnati Bell has found success with providing local customers a high-quality alternative to TWC. The incremental power that New Charter will gain immediately after the transaction and the planned further roll-ups of the cable MVPDs that Charter contemplates require careful Commission consideration to prevent the playing field for Terrestrial Competitors from tipping further in favor of New Charter.

Ultimately, this is a fight over whether or not New Charter will face meaningful competition in the future for broadband services. New Charter and Liberty Broadband's affiliates will use every advantage they can over essential inputs to squeeze out dual and triple play video competitors because, by doing so, New Charter eliminates broadband competitors.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Applications of Charter)	MB Docket No. 15-149
Communications, Inc., Time Warner)	
Cable Inc., and Advance/Newhouse)	
Partnership)	
)	
For Consent to Transfer Control)	
of Licenses and Authorizations)	
)	

**COMMENTS OF
CINCINNATI BELL EXTENDED TERRITORIES LLC**

Cincinnati Bell Extended Territories LLC (“Cincinnati Bell”), as a local head-to-head terrestrial competitor to Time Warner Cable, Inc. (“TWC”), submits these comments in connection with the Federal Communication Commission’s request for input on the transaction involving consolidation of Charter Communications, Inc. (“Charter”), TWC and Advance/Newhouse Partnership (“A/N”) (collectively the “Transaction”) that will result in the combination of the second third and sixth largest cable multichannel video programming distributors (“MVPD”).¹ But it won’t stop there, and the Commission cannot ignore the inevitability, as discussed below, that, if approved, the Transaction will unleash a roll-up spree by Charter that could ultimately result in Charter rivaling the scale and reach of today’s Comcast.

¹ See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, FCC 15-4113-99, 30 FCC Rcd 3253 (2015) (“Competition Report”) at ¶ 25.

Because Charter will profoundly change as a result of the Transaction, we, as does Charter in its Public Interest Statement, refer to the post-Transaction Charter as “New Charter.”² We refer to those terrestrial MVPDs that have fewer customers than New Charter³ and compete directly with Charter, TWC or A/N as “Terrestrial Competitors.”

DISCUSSION

I. THE MULTICHANNEL VIDEO DISTRIBUTION MARKETPLACE IS BECOMING DOMINATED BY A HANDFUL OF UBER-LARGE PROVIDERS THAT HAVE UNDO INFLUENCE OVER THE COST AND AVAILABILITY OF ESSENTIAL INPUTS TO TERRESTRIAL COMPETITORS.

A. New Charter – More than Meets the Eye

1. Bigger Charter is a More Capable and Stronger Charter – But that is the Root of the Problem for Terrestrial Competitors.

Charter trumpets the benefits that the Transaction will bestow upon TWC and A/N customers through better and faster broadband speeds, access to an open Internet and quicker roll-out of advance video technology. It also claims increased job growth in the United States as well as “exceptional” community initiatives.⁴ Overall, Charter presents an excellent analysis that a bigger Charter is a more capable and stronger Charter. Cincinnati Bell agrees – a bigger Charter is a more capable and stronger Charter - but that is the root of the problem.

A bigger and stronger Charter will extract even greater concessions from all-important content providers to the detriment of smaller MVPDs. Perhaps learning from Comcast’s misstep of stressing huge programming cost savings when attempting to obtain regulatory approval for

² *In the Matter of Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Transfer Control of Licenses and Authorizations*, Public Interest Statement, MB Docket No. 15-149 (Public notice released September 11, 2015) (“Public Interest Statement”) at 2.

³ We exclude the very large terrestrial competitors such as Verizon and AT&T from this definition.

⁴ Public Interest Statement at 3-5.

its now failed acquisition of TWC, Charter makes only opaque references to reduced programming costs as a result of its new size. It avoids disclosing this significant benefit. Similarly, Charter avoids any discussion of the adverse impact that the Transaction, especially with respect to content inputs, will have on existing Terrestrial Competitors such as Cincinnati Bell.

A transaction that combines the second, third and sixth largest cable MVPDs,⁵ as outlined in these comments, standing alone will cause significant harm to competition. New Charter will serve about 17.3 million customers,⁶ which equates to 31.8% of all cable MVPD customers⁷ or 17.1% of all MVPD customers.⁸ As discussed in these comments, despite Charter's attempts to misdirect attention from the size of New Charter,⁹ its size will be significant with respect to the market for affiliate and unaffiliated programming for smaller MVPDs, including Cincinnati Bell and similar smaller Terrestrial Competitors. But the Transaction is only the beginning – New Charter is designed to be the Pacman of today's cable industry.

2. Consolidation of the MVPD Marketplace is the Unspoken Driver of the Transaction and Must Factor into the Commission's Analysis.

Consideration of how big New Charter is intended to become is of critical importance and must inform how the Commission reviews the Transaction, as it is only the first requisite step to unleashing a series of smaller transactions. Charter's largest shareholder is Liberty

⁵ Competition Report at ¶ 25.

⁶ Public Interest Statement at 29.

⁷ Competition Report at fn 39 reports 54.4 total cable MVPD customers (computed as 17.3/54.4).

⁸ *Id.* at fn 39 reporting 100.9 million MVPD customers (computed as 17.3/100.9).

⁹ For example, comparisons that the result of the Comcast-TWC merger "would have created a far larger MVPD. . . nearly twice as large as New Charter. . . ." are irrelevant. (Public Interest Statement at 55). In fact, New Charter is likely to achieve the Comcast-TWC combined size relatively quickly following the Transaction.

Broadband (including its affiliated company that also owns Charter stock, Liberty Interactive Corporation, is referred to collectively as “Liberty”). Liberty and its affiliates are controlled by Dr. John Malone, who built much of his wealth rolling-up a fractionalized cable industry two decades ago. Another wave of consolidation is reportedly his current plan. Charter’s attempts to acquire TWC began shortly after Liberty purchased a 27.3% stake in Charter in 2013. Dr. Malone made clear at the June 2013 Liberty Media’s shareholder meeting that he envisioned Charter becoming “a horizontal acquisition machine.”¹⁰ In fact, the consolidation of the cable industry into two or three dominant players that divide the United States into three geographical zones is the end-game.¹¹

Just from the Transaction alone, Charter’s scale in traditional video cable service will increase by 304%.¹² Even the currently second largest cable MVPD, TWC, will see an increase in scale of 58%.¹³ If one looks at the graphical presentation of New Charter’s systems on a map, it is evident that there are many contiguous holes in geographic coverage that could be filled by further cable MVPD roll-ups.¹⁴ The Commission must presume that Charter is one of the three MVPDs in Dr. Malone’s three-MVPD scenario. Assuming an even distribution of the customer

¹⁰ Matthew Rocco, *Cable Shuffle? John Malone Wants Charter to Make a Deal* (June 27, 2013), <http://www.foxbusiness.com/industries/2013/06/27/cable-shuffle-john-malone-wants-charter-to-make-deal/>.

¹¹ Dr. Malone, has stated his belief that only two or three MVPDs can survive in the market. Dr. Malone agreed that it would make sense to have “three guys serving three geographical subsets of the country.” Andy Vuong, *Why John Malone is pushing a mega merger between Charter and Time Warner Cable*, The Denver Post, January 14, 2014, at <http://blogs.denverpost.com/tech/2014/01/14/why-john-malone-is-pushing-mega-cable-merger-between-charter-and-time-warner/12745/> (last visited October 8, 2015). Shortly after increasing Dr. Malone’s attributable interest, Charter commenced its failed effort to take over TWC. Now that the Comcast acquisition of TWC failed, Charter is back to its original plan. There is no evidence to suggest that Charter has yet fulfilled its aspirations to become one of those two or three surviving MVPDs.

¹² Public Interest Statement, Exhibit D, Declaration of Fiona Scott Morton at ¶7, Table 1.

¹³ *Id.*

¹⁴ *Id.* at 33.

base, New Charter aspires to serve one third of the nation's cable MVPD customer base that would make it about the same size as Comcast.¹⁵

New Charter is likely to use its increased scale to continue to squeeze smaller MVPDs into the need to sell to Charter. Macquarie analyst Amy Yong put it succinctly:

“Charter [is] likely to consolidate the industry further.” She added: “Following the acquisition of Bresnan [Communications by Charter] and due to Charter's significant tax assets, the company will likely continue to consolidate the cable industry in tier 2 and 3 cities. Rising programming costs are squeezing smaller players into the arms of larger operators, which in turn are seeking benefits from economies of scale. We are seeing evidence that smaller cable operators will either exit or merge with existing cable operators.”¹⁶

This is all more than speculation, it is the stated intent of Charter. Charter's CEO, Tom Rutledge has gone on record of what Charter is intending to do:

In a phone interview this week from his Stamford, Conn., office, Mr. Rutledge said he expects the cable industry will eventually boil down to "two major players." To be competitive over the long term with telecom and satellite-TV giants, he said, "you'd need a substantially bigger company than Charter.”¹⁷

That company “substantially bigger” than Charter is exactly what New Charter will become.

¹⁵ Comcast currently has about 38.5% of the nation's cable subscribers, Competition Report at ¶ 90 (Comcast has 21.7 million video subscribers) and at fn 39 (56.4 million national cable subscribers) (21.7/56.4)

¹⁶ Georg Szalai, *Charter May Eye Acquisitions After Liberty Investment, Analysts Say*, <http://www.hollywoodreporter.com/news/john-malone-charter-could-consolidate-429691> (March 19, 2013 6:38 AM PDT).

¹⁷ Shalini Ramachandran, *Cable –TV Boss's Vision: Just Two Industry Players*, The Wall Street Journal, <http://www.wsj.com/articles/SB10001424127887324425204578599933806281190> (July 11, 2013 7:13 PM ET).

3. Content-Owning Affiliates of Liberty That Have a History of Withholding Content from Competitors are also Simultaneously Attempting to Consolidate the Content Side of the Industry.

Charter tries to distinguish itself from Comcast by claiming that neither Charter, TWC nor A/N own national programming services.¹⁸ But affiliates of Charter's largest shareholder, Liberty, all of which are controlled by Dr. Malone, do. These include attributable interests (voting power) in Discovery Communications (29%), Starz (33%) and QVC Group (37%) as well as a 3% equity interest in movie studio Lionsgate.¹⁹ It is reported that many believe that Dr. Malone and Liberty are executing a parallel content consolidation strategy as well and may seek, for example, to combine Viacom or CBS with Discovery.²⁰

This consolidation is troubling given that Dr. Malone and Liberty affiliates have a history of withholding content to disadvantage competitors. For example, Liberty-affiliated Starz withheld its programming from Netflix and has through the Starz CEO, Chris Albrecht, reportedly worked to convince non-affiliated networks to withhold their hit shows from Netflix.²¹ It is also reported that if the Transaction is approved, Dr. Malone and Liberty affiliates will gain "further clout with content holders in limiting the deals they can do with Netflix."²²

Past action is a good predictor of future conduct. Liberty and its affiliates have actively sought to stunt the growth of Netflix by withholding content and convincing other content owners to withhold key content. Is it possible that Liberty and its affiliates would seek to

¹⁸ Public Interest Statement at 6.

¹⁹ *John Malone and His Cable/Media Empire* (July 20, 2015), <http://www.investor.com/malone/>.

²⁰ Michael Wolff, *Michael Wolff on Charter's Future as John Malone Makes Last Grasp at Netflix*, The Hollywood Reporter (June 12, 2015) also at <http://www.hollywoodreporter.com/news/michael-wolff-charters-future-as-799706> (June 3, 2015 at 7:00 AM PDT).

²¹ *Id.*

²² *Id.*

withhold or make it more difficult for New Charter's competitors to access content? It certainly appears that is part and parcel of the Liberty family playbook.

4. Dr. Malone and Liberty Have Significant *De Facto* Influence over Charter and They Exercise it.

Charter also attempts to minimize Liberty's ability to influence Charter's decision making by stating it will only have a 25.01% voting interest in New Charter²³ and only three of thirteen board seats.²⁴ Yet it appears that the balance of New Charter's equity will be publicly held.²⁵ Thus, Liberty's large voting block carries a much greater weight. Moreover, Charter's CEO, Tom Rutledge, has made clear that he listens carefully to Dr. Malone's direction. "When he talks, I listen. And he is a significant talker."²⁶

The facts of how this transaction came about speak for themselves. Dr. Malone believed Charter would be a great "horizontal acquisition machine." He shared the strategy with Mr. Rutledge.²⁷ Liberty buys 27.3% of Charter stock. Charter immediately pursues an acquisition of TWC. The influence is there today and it is not going away post-Transaction.

Today, the Commission is faced with a wave of consolidation - one that will consolidate among a select number of MVPDs incredible power and significantly handicap competitors - to the detriment of consumers, consumer choice and the public interest.

²³ Public Interest Statement at 53.

²⁴ *Id.* at 13.

²⁵ *Id.* at 16 (67% – 69% of New Charter's equity will be publicly held which although not directly convertible to voting interest strongly suggests that the remainder of the voting equity is disbursed over numerous public shareholders).

²⁶ David Gelles, *The 'King of Cable' Behind a Charter-Time Warner Cable Deal*, The New York Times (May 26, 2015) also at http://www.nytimes.com/2015/05/27/business/dealbook/john-malone-charter-cable.html?_r=0.

²⁷ Shalini Ramachandran, *Cable –TV Boss's Vision: Just Two Industry Players*, The Wall Street Journal, <http://www.wsj.com/articles/SB10001424127887324425204578599933806281190> (July 11, 2013 7:13 PM ET).

B. Cincinnati Bell Fioptics – TWC Competitor

There are a number of cable operators who have built successful businesses providing consumers a meaningful and high-quality alternative to the service offerings of large MVPDs, such as TWC, notwithstanding their inability to extract comparable pricing to their direct competitors. Cincinnati Bell is one of those competitors.

Cincinnati Bell is a relatively new entrant to video programming distribution. Since the founding of its parent company in 1873 as City and Suburban Telegraph Company, its parent has been and remained a local independent telephone company – never part of AT&T.²⁸ In 2008, Cincinnati Bell began building a fiber-to-the-home (“FTTH”) system and expanded into high-speed data and video programming (“Fioptics”), going into head-on competition with TWC. Cincinnati Bell’s current network capability directly competes with TWC in communities that include 382,000 households (approximately 47% of Greater Cincinnati).²⁹ Cincinnati Bell has set an ambitious target to pass 60-70 percent of the city's homes with its FTTH-based Fioptics product by 2017.³⁰ Cincinnati Bell’s efforts to provide consumers choice has met with success as its Fioptics service continues to grow, currently serving approximately 102,000 video subscribers at the end of the second quarter in 2015, in Ohio, Kentucky and Indiana. Post Transaction, Cincinnati Bell will directly compete with New Charter.

²⁸ Although part of the Bell telephone system, Cincinnati Bell was always an independent company as AT&T held no more than a minority interest.

²⁹ Cincinnati Bell Press Release, *Cincinnati Bell Reports Second Quarter 2015 Results* at <http://investor.cincinnati-bell.com/phoenix.zhtml?c=111332&p=irol-newsArticle&ID=2072802> (last visited October 12, 2015).

³⁰ Sean Buckley, *Cincinnati Bell’s Fox: We’ll pass 60-70% of homes with Fioptics by 2017*, Fierce Telecom, <http://www.fiercetelecom.com/story/cincinnati-bells-fox-well-pass-60-70-homes-fioptics-2017/2014-03-04> (last visited August 25, 2014).

C. Competition is Local and the Transaction Harms Local Competition

Charter makes much of the fact that the Transaction will result in little if any horizontal concerns as “the merging companies do not compete in the same geographic markets.”³¹ But that is not the issue – the issue is competition and competition is local. To determine the Transaction’s impact on competition, the Commission must examine the impact on competitors to Charter, TWC and A/N that existed prior to the Transaction.

Charter dismisses harm to video competition as New Charter’s “future success depends far more on its broadband business than its video business, based on broadband’s higher gross margin percentages and growth trajectory. . . .”³² What Charter fails to acknowledge is that this is not unique to Charter – it is true for all Terrestrial Competitors – yet video remains an important component of a bundled offering for many broadband customers.

More than more than half of broadband customers still purchase bundled video services from their broadband provider. Thus, as between New Charter and Cincinnati Bell, if New Charter seeks to secure the business of a broadband customer who bundles terrestrial video, New Charter has now taken that terrestrial video customer. Conversely, a customer who makes its purchasing decision primarily on comparing terrestrial video products and pricing will buy broadband from the video provider of its choosing.

Selection of broadband and terrestrially-delivered video providers are inextricably linked for the foreseeable future. New Charter has every incentive to compete vigorously for video

³¹ Public Interest Statement at 5.

³² *Id.* at 5-6.

customers. The suggestion that video customers are not important to New Charter's business today is not borne out in reality.

D. Competitors to Comcast and TWC Already Struggle with Unequal and Discriminatory Access to Essential Inputs.

Content, technology and support services are the lifeblood of every MVPD. Access to these essential inputs on competitively neutral prices, terms and conditions is critical to an MVPD's ability to meaningfully compete with New Charter, yet such usually is not the case.

Consider the closest cable MVPD to the size of New Charter immediately following the Transaction³³ (17.3 million video customers)³⁴ that exists today - Comcast at 22.375 million video³⁵ and TWC at 10.8 million.³⁶ Because they are the first and second largest terrestrial-based platforms for delivery of video programming, both are "must-have" platforms for all types of vendors. By virtue of their sheer size, Comcast to a large degree and TWC to a only slightly lesser degree have, as described in more detail in these comments, unprecedented access to a wide variety of content, programming rights, pricing advantages, technology, services and infrastructure. Comcast and TWC receive pricing, availabilities and non-economic terms and conditions (1) not offered by vendors to others, including direct competitors, or (2) for which they receive so-called "most favored nations" ("MFN") provisions that prevent vendors from offering comparable rates, terms and conditions to others, including direct competitors.³⁷ With

³³ Again, the Commission cannot ignore that New Charter is only one or a few MVPD acquisitions away from exceeding the current size of Comcast.

³⁴ Public Interest Statement at 29.

³⁵ See, http://www.nytimes.com/2015/05/05/business/media/comcasts-earnings-rise-10-driven-by-high-speed-internet.html?_r=0.

³⁶ Public Interest Statement at 29.

³⁷ See Testimony of David Cohen, Executive Vice President, Comcast Corporation, Response to Questions of Honorable Lindsey O. Graham, U.S. Senate Committee on the Judiciary (April 9, 2014) ("David Cohen April 9 Senate Testimony") at 24 ("As a general matter, MFN provisions operate to provide material parity between a contracting party and any more favorable or expansive rights negotiated by another party, usually a competitor,

New Charter's size, it will be able to bring TWC's existing agreements into complete parity with Comcast's to the detriment of other MVPDs and especially the Terrestrial Competitors.

II. UNRESTRAINED, NEW CHARTER WILL HAVE THE EFFECT OF FURTHER RESTRICTING THE AFFORDABILITY AND AVAILABILITY OF ESSENTIAL INPUTS.

A. Price/Cost Reductions Extracted by New Charter will Shift Costs, Resulting in Higher Prices to all Other MVPDs, Uniquely Impacting Cincinnati Bell.

The amalgamation of Charter's, TWC's and A/N's subscriber platforms will exponentially exacerbate the situation described above. New Charter will have significant initial and likely growing influence (implicit and explicit) over providers of essential inputs. This influence may hamper Terrestrial Competitors' ability to effectively compete without appropriate Commission-mandated protections.

Programming, the most essential of the essential inputs for cable MVPDs, is the single largest cost of providing service. Today on rates alone, TWC already has a 30% cost advantage over Cincinnati Bell in the procurement of programming.³⁸ This significant advantage will increase as New Charter, without any additional acquisitions, becomes a "must-have" platform for programmers and New Charter negotiates renewals or revisions to its agreements. Not only does the price disparity over the largest single essential input increase, but New Charter reaps a recurring financial windfall immediately upon closing the Transaction.

although these provisions vary widely from agreement to agreement."). According to Mr. Cohen, "[u]nder the Comcast-NBCUniversal Order, Comcast is permitted to have MFN provisions that ensure that Comcast is treated in material parity with other similarly situated MVPDs with respect to price and non-price terms, except to the extent that any other MVPDs' non-price terms "would frustrate the purpose of" the Comcast-NBCUniversal Order, App. A, § IV.B.3.c. Since 2011, Comcast has complied with this provision to the extent that it has obtained MFNs from content producers." *Id.* at 24-25. Note that "similarly situated" is a relative qualifier and must be measured as discussed at Section II(A), below.

³⁸ Declaration of Michael Morrison, Exhibit A ("Morrison Declaration") at ¶ 5.

Unlike Comcast and AT&T that each heralded significant cost savings (\$1.5 billion³⁹ and \$1.6 billion,⁴⁰ annually after the initial three years, respectively), much of which was attributable to programming cost reductions due to increased scale,⁴¹ Charter remains eerily silent about programming cost savings. Rather, it includes passing and opaque references to things like “cost synergies” from “combined purchasing” that will “create operating leverage.”⁴² After the firestorm over the failed Comcast transaction’s impact on programming costs, Charter simply avoids any direct mention of the benefit. That is because the cost savings to New Charter are very significant.

TWC currently pays about 25% less for programming than Charter, or about \$12 per month per video subscriber.⁴³ Thus, immediately post Transaction, migration of Charter’s subscribers to TWC’s programming agreements will yield New Charter a cost savings of about

³⁹ See, *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. For Consent to Transfer Control of Licenses and Authorizations*, Applications and Public Interest Statement, MB Docket No. 14-57 (Public notice released July 10, 2014), Exhibit 4, Declaration of Michael J. Angelakis, Vice Chairman and Chief Financial Officer, Comcast Corp., at 4. (discussing operating expense efficiencies that “are expected to come from savings on programming costs over a three-year period, to the extent and at such time as more favorable rates and terms in some of Comcast’s programming agreements supersede some of TWC’s existing contracts” and projecting annualized “operating expense efficiencies recurring at or above the \$1.5 billion level each year thereafter capital expenditure efficiencies are not expected to continue beyond year three.” Included in this cost savings are programming costs “to the extent and at such time as more favorable rates and terms in some of Comcast’s programming agreements supersede some of TWC’s existing contracts.”)

⁴⁰ Jon Brodtkin, *AT&T/DirecTV and Comcast/TWC mergers could put small ISPs “Out of Business,”* ars technical (June 24, 2014), <http://arstechnica.com/business/2014/06/attdirectv-and-comcasttwc-mergers-could-put-small-isps-out-of-business/> (last visited October 12, 2015) (AT&T’s CEO testified to Congress that its acquisition of DirecTV would “lower content costs for AT&T video subscribers by 20 percent or more” and he projected “total cost synergies to exceed \$1.6 billion annually within three years after closing.”)

⁴¹ In the case of Comcast, migrating TWC customers to its contracts, and in the case of AT&T, migrating its customers to DirecTV’s contracts.

⁴² Public Interest Statement, Exhibit C, Declaration of Christopher L. Winfrey at ¶ 20.

⁴³ Exhibit A, Morrison Declaration at ¶ 6.

\$51.6 million *per month every month*.⁴⁴ This financial windfall strengthens New Charter and will make it that much more formidable as a competitor to the detriment of local competition.

The fact remains that these price reductions, first and foremost the immediate loss of \$51.6 million of recurring monthly programmer revenue - \$619 million in the first year alone, must be recouped from other smaller MVPDs.⁴⁵ Affordability of programming is necessary to effectively compete with New Charter. The combination of Cincinnati Bell's analysis coupled with Charter's overt effort to avoid any discussion of this issue mandates that the Commission's inquiry of the Transaction's include evaluation of the impact on programming rates, terms and conditions for both New Charter and the Terrestrial Competitors. The Commission should expand its information requests to include these issues, as well as production of affiliate and unaffiliated programming agreements for each Charter, TWC and A/N.

The instant Transaction, as well as very real prospect of significant and immediate follow-on transactions by New Charter to roll-up other MVPDs and combinations by others such as Altice's efforts to simultaneously roll-up at least Cablevision and Suddenlink to date, will profoundly and forever change the cost structure of essential inputs. The current 30% disparity between Cincinnati Bell's and TWC's cost of programming is already significant and will grow due to New Charter's ability to leverage its size for greater discounts and the programmers' recovery of those increased discounts through even higher prices charged smaller MVPDs, including the Terrestrial Competitors. While this concern will undoubtedly be expressed on a global basis by other commenters, everyone living in the service areas of any Terrestrial

⁴⁴ Computed as \$12 per customer monthly savings multiplied by 4.3 million current Charter video customers (Public Interest Statement at 29).

⁴⁵ Large MVPDs such as Comcast have sufficient market power that they can resist higher cost demands.

Competitor will be uniquely affected because New Charter will have an almost insurmountable cost advantage that can be used to suppress Terrestrial Competitors, including Cincinnati Bell, in their efforts to provide video services.

B. Service Parity is Largely Unavailable to Cincinnati Bell and other Terrestrial Competitors.

Equally important to the cost of essential inputs is their availability. In order to effectively compete with today's TWC, New Charter or any large MVPD, competitors must have access to the same programming content, availabilities and features. Cincinnati Bell has routinely encountered situations where vendors – the suppliers of essential inputs – are not able to offer the identical offerings as provided to TWC or other very large MVPDs.

Sometimes, providers of essential inputs will claim to offer similar opportunities if Cincinnati Bell will meet the same terms and conditions as found in TWC's agreement. Such offers are illusory more often than not. Such terms and conditions are often structured in a way to frustrate the ability of competitive providers from accessing such offers. For example, the terms and conditions may require that a service or feature is made available to a minimum number of subscribers – sometimes in the millions -- or they involve cross consideration (*e.g.*, a minimum purchase of advertising availabilities) that is measured in terms of aggregate dollars – in amounts that are not commercially feasible for Cincinnati Bell or most, if not all, other Terrestrial Competitors.

When Cincinnati Bell asks for parity representations – a simple representation that no one is getting more favorable rates, terms and conditions than are being offered to it at the time it enters into the contract -- such requests are routinely denied. This simply reinforces the fact that Terrestrial Competitors can never hope for anything close to rate parity. But even when pared

back to non-economic terms and conditions, service parity representations are typically denied -- often without reason. When reasons are given, oblique references to concessions granted to “unnamed large MVPDs” simply cannot be replicated in a commercially viable basis across the vendor’s entire customer base. Regardless of the reason, disparity in non-economic terms and conditions are equally as harmful to competition as is economic discrimination.

C. MFN Provisions Cripple Essential Input Providers’ Ability to Craft Adaptive Agreements to Terrestrial Competitors.

During negotiations, it is not uncommon for a smaller MVPDs, such as the Cincinnati Bell, to attempt to negotiate a unique provision related to the specific facts or circumstances of their systems and/or their stature as a smaller provider. Often, the providers of essential inputs are sympathetic and recognize that it is in their mutual economic interest to custom tailor agreements to meet the unique needs of smaller MVPDs. But the response most frequently encountered is that they can’t – if they do make a one-off arrangement, then they have to make the same arrangement available to unnamed “larger MVPDs” due to the existence of an MFN.

Give the scale of TWC today and certainly with the scale of the New Charter, MFN provisions serve a singular purpose – to suppress competition. When viewed in conceptual terms, the need for New Charter to have any most favored nation’s provisions relative to smaller MVPDs collapses of its own weight. A provider with the scale and purchasing power of New Charter simply does not need contractual protection that a smaller MVPD would be able to extract a better deal and that better deal would pose any material threat to the totality of the economics of either’s operation.

III. TO AMELIORATE THE IMPACT OF FURTHER CONSOLIDATION, THE COMMISSION SHOULD PLACE THE FOLLOWING CONDITIONS ON NEW CHARTER.

A. MFN Provisions Must be Rendered Unenforceable – at Least with Respect to Terrestrial Competitors.

The Commission should bar enforceability of all types of MFN provisions in all vendor agreements to which New Charter is a party relative to any other terrestrial MVPD that competes head-to-head with New Charter. This enforceability ban would apply to express and *de facto* MFN provisions as they relate to all economic and non-economic terms and conditions. Given that the Commission may only have jurisdiction over New Charter, the Commission should require all of the following actions.

1. New Charter must notify existing programming, equipment, technology and service provider vendors that MFNs will not be enforced and such vendors are not to voluntarily continue restricting arrangements with competing terrestrial MVPDs with fewer customers than New Charter has or require parity on any basis with respect to any rates, terms and conditions afforded them.
2. New Charter cannot enforce, or enter into future, agreements, arrangements or understandings, written or otherwise, that provide exclusivity in any way relative to a Terrestrial Competitor.

B. Shedding Light on Charter's and TWC's Rates, Terms and Conditions for Essential Inputs is Critical to Help Protect the Viability of Terrestrial MVPD Competition.

The absence of Commission jurisdiction over the providers of all essential inputs makes it difficult to craft merger conditions that meaningfully protect the harm to competition that directly results from increased market power of New Charter. Even with the above renunciation of MFN provisions, a wink and a nod between the New Charter and a vendor seeking to curry favor with it would render the ban meaningless. Thus, additional information disclosure is

necessary to help measure the extent to which direct terrestrial competitors remain subject to disparate rates, terms and conditions.

Cincinnati Bell urges the creation of an agreement database that would identify for each essential input (without limitation, content in all formats, equipment, technology and service agreements) all material economic and non-economic terms and conditions provided to New Charter. Importantly, this database should be maintained by an independent third party at the sole expense of New Charter (“Data Custodian”). The Data Custodian would publish an online list of all agreements (excluding any confidential information) contained in the database (“Registry”). Upon request,⁴⁶ a Terrestrial Competitor who is negotiating an agreement with a vendor for a service provided by the vendor as listed on the Registry, must be given access by the Data Custodian to the relevant data for that agreement. This data would be subject to confidentiality provisions and use and retention limitations by the Terrestrial Competitor.

Knowledge of this data will not only provide the competitor with a more level playing field in negotiations with the vendor, it will identify with certainty the extent of the competitive disadvantage that still exists. The Commission should establish a confidential reporting procedure if the Terrestrial Competitor believes that the ultimate differential in rates, terms and conditions is so significant as to hinder competition. The Commission should track this data and use it in the aggregate to determine whether the harm to competitors that results from the proposed transactions is so great as to require intervention by the Commission and/or reporting to Congress of the need for corrective legislation.

⁴⁶ Including a certification that the MVPD is a direct competitor and is seeking services from the listed vendor and that it has fewer total customers than New Charter.

C. To Avoid Discriminatory Pricing Aimed at Stifling Current or Future Terrestrial Competitor, New Charter Must Price and Offer Services Uniformly Throughout each DMA.

Under the rate regulation provisions of the 1992 Cable Act, cable operators are subject to rate regulations that impose certain limitations on pricing and promotions.⁴⁷ However, a finding of effective competition by the Commission would free cable operators from certain of those limitations. More specifically, a finding of effective competition relieves a cable operator from (1) basic service tier rate regulation if a local franchising authority had certified to regulate rates, (2) tier buy-through requirements, and (3) its obligation to offer uniform rates for basic service, cable programming service, and associated equipment and installation throughout the franchise area.

In recent years, TWC and Charter have amassed numerous findings of effective competition from the Commission for many of their communities. While neither discloses precise numbers, Charter states that it has “secured FCC recognition of effective competition . . . in many of our communities”⁴⁸ while TWC states it is free from regulation in about 85% of its communities in part due to effective competition determinations.⁴⁹ Recently, the Commission reversed the decades-old presumption and concluded that now there is a universal rebuttable presumption that cable operators are subject to effective competition under the competing provider test.⁵⁰

⁴⁷ See, e.g., 47 C.F.R. §§76.905-76.906, 76.921, 76.984.

⁴⁸ Charter Communications, Inc. Securities and Exchange Commission Form 10-K for the year ended December 31, 2014 at 13.

⁴⁹ Time Warner Cable Inc. Securities and Exchange Commission Form 10-K for the year ended December 31, 2014 at 22.

⁵⁰ See In the Matter of Amendment of the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act, MB Docket No. 15-53, FCC 15-62, 30 FCC Rcd 6574 (2015).

The concern regarding New Charter and the impact of effective competition primarily has to do with geographic rate uniformity and the impact it has on direct competitors like Cincinnati Bell and other Terrestrial Competitors. To the extent a cable operator is subject to effective competition, it can offer different pricing and offerings even within the same franchise area. When faced with direct competition, New Charter would be able to offer existing and potential subscribers rates lower than it would necessarily offer in other parts of the franchise area, without sacrificing profit margins due to the lower pricing they receive on content, equipment and the like. In contrast, direct competitors such as Cincinnati Bell and other Terrestrial Competitors, even though also subject to effective competition, cannot necessarily match such pricing since, as discussed above, they have to pay premium costs for the same content, equipment and the like.

To overcome the competitive harm that effective competition has on Terrestrial Competitors, the Commission should condition approval of the Transaction, notwithstanding any current or future finding of effective competition in a franchise area, by requiring New Charter to make all retail (residential and commercial) offerings and pricing (including without limitation promotions or term offers) uniform throughout each DMA.

IV. PROGRAMMING COST DISPARITIES MUST BE ADDRESSED TO ENSURE THE VIABILITY OF LOCAL TERRESTRIAL-BASED COMPETITION.

A. Liberty-Affiliated Programmers Must Give Terrestrial Competitors the Lowest Rates and Best Non-Economic Terms and Conditions Than it Gives New Charter or Any Other Distributor (Terrestrial or Satellite) in the DMA.

As described above, Cincinnati Bell and most, if not all other Terrestrial Competitors, by virtue of their significantly smaller size, are impeded in obtaining programming, technology,

equipment and the like at competitive pricing to that offered TWC, Charter and A/N.⁵¹ The same can be said for the ability to obtain Liberty-affiliated programming at competitive rates, terms and conditions.

Examining the effectiveness of past Commission actions when imposing transaction conditions is instructive. While the Commission arguably attempted to level the playing field in the NBC/Universal decision (1) by modifying the arbitration provisions applicable to smaller MVPDs in bringing program access complaints, and (2) allowing MVPDs in negotiating with NBC/Universal to “demand a standalone offer for (a) broadcast programming, (b) RSN programming, (c) the bundle of all cable programming, and/or (d) any bundle that a Comcast-NBCU programmer has made available to a similar MVPD,”⁵² - these conditions suffered from flaws that made them ineffective for small and medium-sized cable operators, and their buying group.⁵³ The Commission also declined to disallow volume discounts.⁵⁴

The bounds of volume discounts are not without limits as the Commission determined with respect to the retransmission consent rate differentials within a Designated Market Area. Although presumptively supported by “competitive marketplace considerations,” that presumption disappears where “[p]roposals involving compensation or carriage terms that result from an exercise of market power by a broadcast station or that result from an exercise of market power by other participants in the market (*e.g.*, other MVPDs) the effect of which is to hinder

⁵¹ A/N takes advantage of and benefit of the TWC agreement rates, terms and conditions.

⁵² See *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, FCC 11-4 (2011), 26 FCC Rcd 4238 (2011) at ¶57 (“NBC/Universal Order”).

⁵³ These flaws have been well documented in the past. See *In the Matter of Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, ACA Notice of Ex Parte (filed December 22, 2010).

⁵⁴ See NBC/Universal Order at ¶56.

significantly or foreclose MVPD competition.”⁵⁵ The Commission should apply a similar standard here.

Volume-pricing discounts are given based on the total number of subscribers served by a particular MVPD across all areas served. An inherent bias then exists with respect to large, national MVPDs. Today there are more than 900 cable operators, not to mention non-cable MVPDs. Many of these MVPDs serve areas that would not otherwise receive terrestrial cable service because the low household density does not justify the capital expenditures. For other providers, the business plan is to provide consumers a meaningful alternative to an incumbent provider. These providers serve to ensure that all Americans have access to quality service and choice. Despite the availability of satellite offerings in most of these areas, cable operators typically offer robust broadband services (faster than DSL) and the entire system is supported by the revenue generated from consumer purchases of one or more services (video, Internet and telephone). The demise of video services for these operators resulting from high programming costs threatens the viability of these systems, resulting in either the closing of systems or higher prices (if sustainable) for broadband services – neither result is in the public interest. Therefore, consistent with communications policy, the Commission must act to ensure the continued viability of such players.

⁵⁵ Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues; Good Faith Negotiation and Exclusivity, 15 FCC Rcd 5445, ¶ 58(2) (2000).

At a minimum, the Commission should place conditions on New Charter and Liberty to require them to offer Terrestrial Competitors, the same or better pricing and non-economic terms that are provided to the New Charter at all times after the Transaction is consummated.⁵⁶

B. The Commission Should Require Production of all Charter, TWC and A/N Content Agreements to Allow Assessment of Existing Competitive Advantages in Rates, Terms and Conditions to Serve as a Basis for Determining the Need for Broader Merger Conditions.

In fact, the Commission should require Charter, TWC and A/N to produce all of the content agreements for review by the Commission. Under the Commission's procedures to review highly confidential information, counsel for parties to this proceeding can compare the rates, terms and conditions of those agreements with those of their clients and advise the Commission as to the extent of the benefits that Charter, TWC and A/N enjoy today – a significant advantage that will only increase for New Charter. Based on this supplemental information, additional conditions on access to programming agreements, both affiliated and non-affiliated, may be warranted. But the only way to assess the need is for the Commission to require production of all content agreements.

V. ABSENT SOME ABILITY TO ENSURE A MORE LEVEL PLAYING FIELD BETWEEN TERRESTRIAL COMPETITORS AND NEW CHARTER, THE COMMISSION SHOULD DENY THE TRANSACTION.

The proposed mechanisms discussed above provide no more than the ability for direct competitors to compete effectively by gaining access to New Charter's rates, terms and conditions for essential inputs in an attempt to provide a benchmark for negotiations with the

⁵⁶ Such pricing must be no greater than the price paid by New Charter to the Liberty-affiliated programmer unless such pricing is not commercially reasonable when compared to actual third-party prices, such as those offered to other large third-party MVPDs.

same vendors. Opposition to these measures is evidence of the market-power advantage that TWC (including A/N) has today and will only be exacerbated by the Transaction as well as those that will follow as a natural consequence. If opposed, the only way to ensure the viability of Terrestrial Competitors is to deny the Transaction.

Respectfully submitted,



Eric E. Breisach
Lisa Chandler Cordell
Breisach Cordell PLLC
5335 Wisconsin Avenue, NW
Suite 440
Washington, DC 20015
(202) 751-2701

*Attorneys for Cincinnati Bell Extended
Territories LLC*

Ted Heckmann
Managing Director of Regulatory Affairs
And Assistant Corporate Secretary
Cincinnati Bell Extended Territories LLC
221 East Fourth Street
Cincinnati, Ohio 45202

October 13, 2015

EXHIBIT A

DECLARATION OF MICHAEL MORRISON

1. I am currently Director of Video & Entertainment Product Development at Cincinnati Bell Extended Territories, LLC ("Cincinnati Bell").
2. I am principally responsible for the planning and procurement of content for our video cable MVPD business, Fioptics.
3. I am responsible for the negotiation of the rates, terms and conditions of all types of programming agreements, including national cable networks, regional sports networks, local content and broadcast retransmission consent agreements.
4. Cincinnati Bell purchases the financial services of Morgan Stanley & Co. LLC and its affiliates (collectively "Morgan Stanley"). In a research report dated August 21, 2015 ("Morgan Stanley Report"), Morgan Stanley identifies the estimated programming costs for each Charter Communications, Inc. ("Charter") and Time Warner Cable, Inc. ("TWC") for the years 2012 - 2018.
5. I analyzed the data in the Morgan Stanley Report and compared it to Cincinnati Bell's anticipated programming costs for 2016 and identified that TWC (before the transaction) will pay about 30% less than Cincinnati Bell for programming of similar composition (these amounts are consistent with differentials in 2015 as well).
6. Based on my comparison of programming costs in the Morgan Stanley Research, TWC pays about 25% less for programming than does Charter.

The foregoing is true and correct to the best of my knowledge, information and belief.

October 12, 2015


Michael Morrison